

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking Regarding Policies,
Procedures and Rules for Development of
Distribution Resources Plans Pursuant to Public
Utilities Code Section 769.

Rulemaking 14-08-013
(Filed August 14, 2014)

**REPLY OF MARIN CLEAN ENERGY TO THE RESPONSES ON THE
DISTRIBUTION RESOURCES RULEMAKING**

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In accordance with the directives provided in the August 20, 2014, Order Instituting Rulemaking (“Rulemaking”), Marin Clean Energy (“MCE”)¹ respectfully submits the following replies to the responses to the Rulemaking. The Rulemaking directs that the IOUs are to develop “distributed resource plans” (“DRPs”). MCE responds herein to comments raised by other parties that touch upon topics that have relevant lessons learned by MCE as a Community Choice Aggregator (“CCA”). These topics are: (1) the competitively neutral integration and valuation of Distributed Energy Resources (“DERs”); (2) the transparency of information relating to DER adoption; (3) coordination between DER adoption and ongoing Investor Owned Utility (“IOU”) planning processes before the Commission; and (4) coordination of DER adoption with other State programs and objectives. In response to the recent workshop on these issues, MCE further indicates the needs for deployment of DERs by non-IOU entities in Appendix A.

¹ MCE currently serves approximately 125,000 customer accounts in Marin County and the City of Richmond. In 2015, MCE will add the County of Napa and the City of San Pablo to its service territory. All CCA customers are deemed “unbundled” because they receive their generation and distribution services from different service providers. In MCE’s case, a customer receives generation services from MCE and transmission and distribution services from PG&E.

MCE is the first CCA in California. MCE's mission is to "address climate change by reducing energy related greenhouse gas emissions and securing energy supply, price stability, energy efficiencies, and local and economic workforce developments."² To achieve its mission, MCE is actively engaged in deploying and facilitating the deployment of distributed resources.

I. DERs Adoption Must Be Integrated and Valued in a Competitively Neutral Manner Relative to IOU Procurement of Non-Distributed Generation Resources

A. If Departing Load Charges are Deemed Necessary for DER Adoption, the Commission Should Minimize Such Charges

Just as departing load charges act as a deterrent to customer choice in general, they similarly will act as a deterrent to the development and installation of new DER. In that context, MCE agrees with NRG Energy, Inc. ("NRG"):

Non-Bypassable Charges ("NBCs") for Departing Load similarly serve to make DERs more expensive, despite the obvious environmental and resilience benefits to all consumers created by the installation of DER technologies. Departing Load Charges are a particularly pernicious NBC [Non-Bypassable Charge] which substantially harm the competitiveness of California's DER market.³

NRG goes on to note that Departing Load Charges represent a significant cost disadvantage to DERs in California and that departing load charges cost more than the departing loads actually pay.⁴ In support of this conclusion, NRG cites a recent report by Aspen Environmental Group, "*Independent Review of 'Onsite Generation in CA: Potential Ratepayer Savings and Key Barriers'*" ("Aspen Report"), which concludes that "from 2010 through 2013, [Distributed

² The MCE Mission can be found here: <http://marincleanenergy.org/>

³ NRG at 12.

⁴ *Id.*

Generation] would have provided enough economic benefit to other ratepayers to more than offset the value of Departing Load Charges.”⁵

CCAs have firsthand experience regarding how Departing Load Charges can be leveraged anti-competitively by IOUs if the Commission does not forcefully regulate the minimization of these charges. The Power Charge Indifference Amount (“PCIA”), the primary Departing Load Charge, is currently equal to approximately 10% of MCE customer bills. There is no end in sight to these charges and this anti-competitive charge harms CCA development and implementation in California.

B. If IOUs or IOU Affiliates are Allowed Ownership in the DER Space, the Commission Should Invoke the Affiliate Transaction Rules to Minimize Potential IOU Abuse of Market Power

In their opening comments, several parties raised concerns regarding the potential for utilities to abuse their market power in the DER arena. For example, the Environmental Defense Fund (“EDF”) argued that, “If utilities or utility affiliates are permitted to own DER, the Commission should develop rules to prevent utilities from exerting market power.”⁶ EDF further explained that rules associated with asset ownership should be developed and that “attention must be given to monitoring and verifying the deployment of DERs since careful accounting will be necessary to incorporate DERs into Resource Adequacy (“RA”) assessments and long-term procurement planning.”⁷ NRG similarly recommended that, “At a minimum, the Commission should ensure that each utility DRP details the functional separation measures necessary to

⁵ “*Independent Review of ‘Onsite Generation in CA: Potential Ratepayer Savings and Key Barriers,’*” Aspen Environmental Group (June 11, 2014) at 3, available at: <http://chpassociation.org/wpcontent/uploads/2014/06/Independendent>

⁶ EDF at 4.

⁷ Id.

ensure that the utilities' Distribution System Operator ("DSO") function does not create an economic disadvantage for independently owned and operated DERs."⁸

Unfortunately, CCAs have much firsthand experience of IOUs abusing their market power in an attempt to protect their monopoly and squelch competition. In fact, PG&E's improper anti-CCA marketing activities during MCE's establishment were so egregious that the Commission was forced to take action (in D.10-05-050) to address utility marketing activities vis-à-vis CCAs. The decision provided that the Commission intended:

(1) to make clear that, if utilities engage in commercial speech concerning CCA service and the utility's competing service that is untrue or misleading, they may be liable for penalties and subject to a temporary restraining order or preliminary injunction in a complaint before the Commission.⁹

The State Legislature also found it necessary to protect the nascent CCA movement through the passage of Senate Bill ("SB") 790 (2011) which prescribed competitive principles and established limits on IOUs that seek to market and lobby against CCA programs. SB 790 explicitly recognizes that "[t]he exercise of market power by electrical corporations is a deterrent to the consideration, development, and implementation of community choice aggregation programs."¹⁰

Based on its past experience dealing with the IOUs, MCE believes that the successful development and deployment of cost-effective DERs will be greatly facilitated by mandating that the

⁸ NRG at 3.

⁹ D.10-05-050 at 1. The same decision notes at pp. 2-3 that, "In the proceedings leading to the issuance of D.05-12-041, the electric utilities represented that they had no intention to engage in marketing that would disparage CCA programs or to encourage customers to opt out of CCA service. Starting in mid-2007, Pacific Gas and Electric Company (PG&E) reversed its position from supporting the implementation of CCA programs to opposing them, and began to aggressively market against their implementation and to solicit customers to opt out of them, to the effect that such programs have been, or are at risk of being, abandoned."

¹⁰ SB 790, Sec. 2 (f).

IOUs' DER activities be governed by the Affiliate Transaction Rules.¹¹ In essence, these rules require a utility to provide new products and services through an affiliate unless an exception applies. The Affiliate Rules have been in effect for a number of years, are well understood by the IOUs and third parties and carefully administered by the Commission. Their application to DER deployment plans could be achieved with a minimum amount of delay.

However, if the Commission has no appetite for applying the Affiliate Transaction Rules to DER implementation, MCE recommends that the IOUs should be limited to supporting DERs from a distribution utility role only. We note that Vote Solar addressed this in its comments stating: "...the existing three large electric IOUs are in the best position to manage the distribution grid. However, they should do so with a mandate to ... provide open access to their distribution facilities (including the continue accommodation of customer-side generation...."¹²

If the Commission declines to apply the Affiliate Transaction Rules, then the IOUs should be restricted solely to their traditional distribution function and not permitted to own DERs. Only by invoking such a prohibition can the Commission be assured of preventing the untoward and excessive use of utility market power.

II. Information Transparency is Crucial for Facilitating the Adoption of DERs

A. Transparency of Information for Development and Interconnection of DERs

In order to foster a more level playing field for DER development and deployment, several commenters called for greater transparency and easier access to distribution system data. For example, NRG argued that, "The Commission should insist that each IOU put transparent

¹¹ Affiliate Transaction Rules Applicable to Large California Energy Utilities, Section VII. *See* D. 06-12-029.

¹² Vote Solar at 2, emphasis added.

prices reflecting the value of those DER-provided services in a manner that is accessible to the average customer and allow DERs to interface directly with the wholesale market, as prices warrant.”¹³ Along the same lines, the Natural Resources Defense Council (“NRDC”) urged the Commission to ensure that information (such as the existing Renewable Auction Mechanism (RAM) interconnection maps) “is presented in a more accessible way, updated more consistently, and made searchable so DER developers are able to see areas they should target for development.”

As examples of the type of information-sharing that will be critical for developing a competitive marketplace, MCE recommends that RAM maps should be made downloadable as GIS layers (and include queued capacity), that congestion pricing maps/calculators should be made readily available, and interconnection fees should be clearly itemized.

B. Transparency of Advanced Meter Infrastructure Information to Inform DER Deployment

MCE believes it is critical for Advanced Meter Infrastructure (“AMI”) information to be made available on a fully transparent basis in order to facilitate DER deployment on a timely and cost effective basis. However, this is not likely to happen without specific Commission directives to that effect. Obtaining this information on a timely and accurate basis has proved to be extraordinarily difficult for MCE. Yet without it, independent developers of DERS will be stymied in their efforts to develop and deploy innovative and creative DERs. MCE’s inability to obtain reliable AMI data from PG&E in a timely fashion should serve as a cautionary tale for how DERs deployment can be frustrated by utility recalcitrance to share information that should be freely shared.

¹³ NRG at 14.

III. Existing Commission Planning Processes Must Accurately Account for DERs to Minimize Over-Procurement by the IOUs

A. LTPP and RA Proceedings Should Accurately Account for DERs

The long-term procurement plan (“LTPP”) and Resource Adequacy (“RA”) planning processes need to be modified to account for the growth potential in DERs. As noted in the attachment to the OIR, in order to realize California’s policy objectives, the first key aspect is to “[f]ully address DER potential to participate in bulk power system (e.g. wholesale energy and ancillary service markets) and to meet near, mid and long term resource adequacy requirements.”¹⁴

While successful DER deployment will have a direct and tangible effect on utility procurement requirements (both for bulk power and RA), the growth of DERs has not been fully accounted for in the IOUs’ respective procurement plans that were filed on October 3 in the current LTPP docket (R.13-12-010). Therefore, it is incumbent upon the Commission to require the IOUs to update their plans to include estimates for the growth of DERs so as to avoid IOU over-procurement and its attendant (and wholly unnecessary) increase in stranded costs for ratepayers.

The notion that DER forecasts should be built into IOU procurement planning closely mirrors the recent discussion on the Commission’s approval of D.12-01-033, in which numerous parties argued that IOU bundled procurement plans should contain appropriate forecasts for departing direct access and CCA load. In particular, the decision noted that:

MEA criticizes PG&E’s proposed plan on the grounds that it contains inaccurate forecasts of the load served by MEA. Specifically, MEA argues that PG&E’s plan improperly excludes the load of MEA. (MEA Opening Brief at 1.) According to

¹⁴ “More than Smart, a Framework to Make the Distribution Grid More Open, Efficient and Resilient,” at 19.

MEA, PG&E's plan does not reflect the passage of Senate Bill (SB) 695 (Stats. 2009, ch. 337), and the correspondingly increased certainty regarding future direct access loads. (*Id.* at 3.). AReM notes that SCE updated its assumptions for direct access load based on SB 695 and D.10-03-022, but that PG&E and SDG&E did not. (AReM Opening Brief at 2-4.) Sierra Club and Shell fundamentally agree with MEA and AReM.¹⁵

After due consideration of this issue, the Commission directed that IOU procurement plans should include reasonable forecasts of departing load, either to direct access or community choice aggregation.

It is appropriate to use more accurate load forecasts for MEA, consistent with SB 695, instead of the load forecast in the standardized planning assumptions. SCE is authorized to use its direct access assumptions for purposes of establishing position limits and ratable rates for its bundled procurement plan. The other utilities should engage in procurement consistent with SCE's assumptions for direct access.¹⁶

The Commission should apply the same logic to DERs that it has already applied to DA and CCA loads and direct the IOUs accordingly.

These same considerations hold true with regard to RA as well. As noted by EDF, "...attention must be given to monitoring and verifying the deployment of DERs since careful accounting will be necessary to incorporate DERs into Resource Adequacy ("RA") assessments and long-term procurement planning."¹⁷ As noted above, the Commission must fully address the potential for DER to meet near, mid and long term resource adequacy requirements. The associated issues should be coordinated with the current resource adequacy docket R.14-02-001 to ensure that DER contributions can be adequately and accurately measured and counted toward the resource adequacy obligations of all load-serving entities.

¹⁵ D.12-01-033 at 30.

¹⁶ *Id.* at 31.

¹⁷ EDF at 4.

B. DERs Must Be Accurately and Holistically Valued

Question 4 in the rulemaking asked, “*What specific values should be considered in the development of a locational value of DER calculus? What is optimal means of compensating DERs for this value?*” MCE supports the rubric for a conventional ratepayer cost valuation of DERs outlined by The Utility Reform Network (“TURN”):

The specific values should include any avoided system costs that would otherwise be born by the ratepayers of the same utility. These include reductions (or delays) in capital spending, lower operations and maintenance expenditures, reduced line losses, avoided purchases of energy and generation capacity, and other similar tangible costs that would be reduced through the installation and operation of a particular DER in a specific location.¹⁸

However, whereas TURN would confine the valuation of DERs to these avoided system costs, MCE agrees with the argument put forth by EDF, that:

Environmental attributes should be fully valued as compared with traditional investments. This should include consideration of polluting air and greenhouse gas emissions (including the six Environmental Protection Agency criteria pollutants), water quality and supply impacts, toxins, solid waste disposal, and land use disruptions (e.g., large or disruptive use of space; pollution concentrations). Greenhouse gas impacts should be expressly quantified and monetized.¹⁹

DERs will undoubtedly provide both conventional ratepayer values as well as broader societal benefits. Each needs to be measured carefully and accurately so that the DER developers may be fairly and fully compensated for their efforts, thus encouraging greater DER development activities.

C. DRP Must Be Closely Coordinated with Individual DER Proceedings

In addition to considering the impact of DERs on distribution planning (and procurement and RA planning, as argued above), it will be critical to understand how the interaction between

¹⁸ TURN at 3.

¹⁹ EDF at 8.

various DERs compounds their impact. While it goes without saying that improved and less costly battery storage will radically alter the capabilities and capacities of demand response and intermittent distributed generation resources, it is not at all clear that the current regulatory environment is sufficiently integrated to account for these interactions. For this reason, MCE strongly supports EDF's argument that "existing 'siloes' related to distribution planning and investments in EE, DR, (including tariff development) and DG need to be removed, with the related regulatory proceedings better synced" and "a much more integrated approach should be baked into IOU and regulatory planning and decision-making structures and processes."²⁰

IV. The Commission Should Balance Prioritizing the Deployment of DERs in Communities Impacted by Pollution and Communities Where Customers are Receptive to DERs

As the Commission deliberates which geographies should be prioritized for DER deployment, it should acknowledge and attempt to remedy (in some small way) past environmental injustices. The Commission should prioritize environmental justice not only for policy reasons, but also from a practical coordination perspective because DER deployment should align with other State funding programs (e.g., Cap and Trade) that are seeking to concentrate investment in disadvantaged communities. This will leverage complementary efforts and create a more holistic process to serve marginalized communities. MCE agrees with EDF that "[a]n analysis of location-specific DER deployment should be undertaken in order to ensure that the benefits of DER extend to where they are needed most, including areas that are currently over-burdened by pollution."²¹

²¹ EDF at 8.

At the same time, the Commission should seek to ensure that local governments are sufficiently incentivized to take it upon themselves to encourage the development of DERs in their respective jurisdictions (e.g., through fast track permitting) by rewarding those communities willing to do more. Diffusion theory suggests that focusing on these early adopters is in fact the most efficient way to create change. MCE agrees with a similar sentiment espoused by Vote Solar:

We believe the optimal location of DERs varies by one or more of three possible goals or DER applications: (1) where customers would like to integrate DERs, or “Customer Responsiveness” (2) where DERs can be integrated at a low cost, or “Low-Cost Integration;” and (3) where DERs can maximize grid benefits, or “Benefits Maximization.”²²

In finalizing its plans for DER deployment, the Commission should attempt to strike a balance between remediating conditions in those communities most affected by pollution and facilitating the rapid uptake of new technologies by communities most eager to adopt them.

V. Conclusion

MCE thanks the Commission, Assigned Commissioner Picker, and Administrative Law Judge Gamson for their attention to these comments.

²² Vote Solar at 4.

Respectfully submitted,

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APPENDIX A

Needs for CCAs and Non-IOU Entities

MCE Key Objective:

Maximize the widespread deployment of distributed resources to reduce GHGs on a competitively neutral basis.

IOU Distribution Resource Plans (DRPs):

The following issues must be identified in the IOUs' Distribution Resource Plans (DRPs):

- **General Needs:**
 - Authority and choice should be distributed: Utility Distribution Companies (UDCs) as facilitators of the deployment of distributed resources
 - Streamline connection to the distribution grid to enable “plug and play” DR options
 - To ensure “grid neutrality” similar to net neutrality:
 - Provide pathway for real-time data access
 - Provide efficient and effective access to information
 - Ensure robust billing functionality for DR resources that are not operated by the IOU
 - Certify proper cost allocation among generation and distribution functions to ensure ratepayer protections and fair costs
- **Needs Related to Specific “Distributed Resources” Identified in Section 769(a):**
 - **Distributed Renewable Generation Resources**
 - Need to have ease of interconnection for distribution level resources
 - Need transparency in interconnection for distribution level resources in order to allow technology to drive policy
 - **Energy Efficiency**
 - For zero net energy (ZNE) buildings, need to have EV to grid integration
 - Need access to the meter in order to deploy storage and demand response in multi-family settings
 - **Energy Storage**
 - Ensure meter access to deploy storage
 - **Electric Vehicles**
 - Manage EV to grid integration
 - **Demand Response Technologies**
 - Access to real-time AMI data will ensure scalable pilots